

United States Courts  
Southern District of Texas  
FILED

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APR 29 2003

§ Civil Action No. H-01-3624  
§ **(Consolidated)**

Defendants.

Canadian Imperial Bank of Commerce (also referred to herein as “CIBC”) submits this Statement of Undisputed Material Facts in support of its motion for summary judgment. In its motion and brief in support, CIBC demonstrates that it is not a proper party to this suit as a matter of law. The undisputed evidence establishes that while entities affiliated with CIBC—not named as defendants in this action—may have

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participated in some of the conduct identified in the Complaint (e.g., the issuance of analysts reports), CIBC itself, an entity legally distinct from those affiliated entities, did not participate in and is not legally responsible for any such alleged misconduct.

## **II. CANADIAN IMPERIAL BANK OF COMMERCE**

1. Canadian Imperial Bank of Commerce is a registered Canadian chartered bank company and has its principal offices in Toronto, Ontario, Canada. Tab 1 hereto (Affidavit of Valerie K. Pettipas), ¶ 3. CIBC commenced its business in 1867 as “The Canadian Bank of Commerce”, which amalgamated with the “Imperial Bank of Canada” in 1961 to form “Canadian Imperial Bank of Commerce.” *Id.*

## **III. CIBC IS THE SOLE NAMED DEFENDANT**

2. Although in the Complaint plaintiffs refer in a cursory manner to other entities that are affiliated with Canadian Imperial Bank of Commerce (*see* Complaint, p. 102, at ¶ 103), plaintiffs do not name any such entity as a defendant. Rather, plaintiffs confusingly state, first, that they will refer to non-defendant, affiliated entities collectively as “CIBC”:

“Defendant Canadian Imperial Bank of Commerce is a large integrated financial services institution that through its controlled subsidiaries and divisions (such as CIBC Oppenheimer or CIBC World Markets (*collectively* “CIBC”)) provides ...”

*Id.* (Emphasis added). However, plaintiffs later state, secondly, that they will refer to Canadian Imperial Bank of Commerce *alone* as “CIBC”. *Id.*, p. 373, at ¶ 715.

3. Thus, notwithstanding its failure to name any entity affiliated with CIBC as a defendant in this action, plaintiffs inconsistently direct allegations at both “CIBC” and at “Canadian Imperial Bank of Commerce” without differentiating between the two or identifying the entity that the plaintiffs claim engaged in the alleged conduct.

IV. **THE COMPLAINT INCORRECTLY IDENTIFIES CIBC AS A PARTICIPANT IN VARIOUS ACTIVITIES OR TRANSACTIONS RELATING TO ENRON**

4. In the section of the Complaint in which plaintiffs purport to state their case against CIBC, entitled "Involvement of CIBC" (*Id.*, p. 372), plaintiffs direct *all* of their allegations (regarding financial transactions) against "Canadian Imperial Bank of Commerce," not against any CIBC-affiliated entities. Significantly, moreover, and as noted, plaintiffs fail to name any of those affiliated entities as defendants in the Complaint.

5. The following table and the referenced supporting affidavits demonstrate that CIBC is not a proper defendant and that plaintiffs incorrectly attributed the (alleged) conduct of legally distinct companies to CIBC. Specifically, column one of this table states the plaintiffs' allegations against CIBC. Column two of the table (a) identifies the legally separate non-defendant CIBC-affiliated entity that was involved in the subject business transaction or activity; and (b) where applicable, shows that plaintiffs inaccurately described the subject transaction.

<b><u>Allegations Against CIBC</u></b>	<b><u>Undisputed Facts</u></b>
CIBC and/or its top executives invested in LJM2. Complaint, ¶¶ 29, 64, 461, 646, 731, 732.	Upon the formation of LJM2, CIBC Capital Corporation (not CIBC) became a limited partner. Tab 2 hereto (Affidavit of Lucia Martinez), at ¶ 32. <i>See also id.</i> ¶ 13.
CIBC issued analyst reports re: Enron. Complaint, ¶¶ 29, 113, 120, 132, 148, 161, 176, 183, 194, 199, 207, 230, 251, 269, 323, 334, 349, 372, 715, 724.	CIBC World Markets Corporation (not CIBC) issued research reports re: Enron. Tab 2 at ¶¶ 7, 22.

<u><b>Allegations Against CIBC</b></u>	<u><b>Undisputed Facts</b></u>
CIBC did the NewPower IPO, created Hawaii 125-0, made loans to Hawaii 125-0, and received a total return swap guaranty. Complaint, ¶¶ 42, 487, 721, 731, 893.	CIBC World Markets Corporation (not CIBC) was an underwriter in the 10/00 NewPower IPO. Tab 2 at ¶¶ 8, 23. CIBC INC. (not CIBC) held equity certificates in the Hawaii 125-0 Trust (now known as Hawaii II 125-0 Trust) and the Hawaii I 125-0 Trust. <i>Id.</i> ¶¶ 16, 35. CIBC (and other banks) made loans to those Trusts. <i>Id.</i> ¶ 5.
CIBC underwrote 5/98 \$35 MM Enron common stock offering. Complaint, ¶¶ 48, 1006.	CIBC Oppenheimer Corp. (not CIBC) was the underwriter in a 5/98 offer to sell \$15 MM of Enron common stock. Tab 2 at ¶¶ 17, 26.
CIBC underwrote 5/19/99 \$500 MM 7.375% Note offering. Complaint, ¶¶ 48, 151, 723.	CIBC World Markets Corp. (not CIBC) was the underwriter. Tab 2 at ¶¶ 9, 24.
CIBC participated in the 07/01 6.31% and 6.19% offerings of, respectively, Marlin Water Trust II and Marlin Water Capital Corp. II Notes. Complaint, ¶¶ 49, 720.	CIBC World Markets Corp. (not CIBC) was an initial purchaser in the 6.31% offering of Marlin Water Trust II and Marlin Water Capital Corp. II Notes. Tab 2 at ¶¶ 10, 25. CIBC World Markets plc (not CIBC) was an initial purchaser in the 6.19% offering of Marlin Water Trust II and Marlin Water Capital Corp. II Notes. <i>Id.</i> ¶ 29. CIBC was not an underwriter in either offering. <i>Id.</i> ¶ 6.
CIBC underwrote 10/00 NewPower offering. Complaint, ¶¶ 49 and 720.	CIBC World Markets Corp. was the underwriter (not CIBC). Tab 2 at ¶ 8, 23.
CIBC loaned \$115.2 MM to Braveheart (EBS Content Systems LLC) re: Blockbuster. Complaint, ¶¶ 522, 727-28.	CIBC did not loan any money to "Braveheart" or EBS Content Systems LLC; CIBC and other banks made loans to the aforementioned Hawaii Trusts. Tab 2 at ¶¶ 20, 5. CIBC INC. held equity certificates in those Trusts. <i>Id.</i> ¶ 35.
CIBC underwrote 11/93, 7/94, 1/97 offerings. Complaint, ¶ 718.	These three transactions involved Oppenheimer & Co., Inc. (not CIBC). Tab 2 at ¶¶ 19, 28. In November 1997, CIBC Wood Gundy Securities Corp. acquired Oppenheimer Holdings, Inc. which was the sole shareholder of Oppenheimer & Co., Inc. Tab 3 (Affidavit of Patricia Bourdon) at ¶ 3. Thereafter, CIBC Wood Gundy Securities Corp., Oppenheimer Holdings, Inc. and Oppenheimer & Co., Inc. were merged into CIBC Oppenheimer Corp. <i>Id.</i>

(Affidavit of David Austin), 6 (Affidavit of Bruce Renihan) at ¶ 3. Further, these entities are not all subsidiaries of the same companies; significantly, only one is a direct subsidiary of CIBC. *Id.* Moreover, each of these entities performs separate and distinct business functions, ranging from lending to underwriting to issuing market analyst reports, and in so doing generates its own revenue. Tabs 3-6 at ¶ 4.


10. In addition, at all times during the purported class period in this case (October 1998 to November 2001), the non-defendant affiliated entities were more than adequately capitalized, each having hundreds of millions and even billions of dollars in net capital value. Tabs 3-6 at ¶ 4. Each entity also prepares and keeps its own books and records, and maintains its own by-laws, bank accounts, accounts receivable, and other assets. *Id.* ¶ 6.

11. Furthermore, the boards of directors of each of these entities separately conduct board meetings independent of those for affiliated entities, and separately record and maintain the minutes for such meetings. Tabs 3-6 at ¶ 5.

12. CIBC itself was not the alleged actor described in the Complaint. *See generally* Tab 2 at ¶¶ 4-21.

**CERTIFICATE OF SERVICE**

I hereby certify that on April 29, 2003, true and correct copies of the (1) Statement of Undisputed Material Facts of Defendant Canadian Imperial Bank of Commerce in Support of its Motion for Summary Judgment; and (2) Motion of Defendant Canadian Imperial Bank of Commerce for Summary Judgment have been served on all counsel in accordance with the Orders Regarding Service of Papers and Notice of Hearings via Independent Website entered on June 6, 2002 and August 7, 2002.

  
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Mark D. Manela

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<b>In re ENRON CORPORATION SECURITIES LITIGATION</b>	§	<b>Civil Action No. H-01-3624 (Consolidated)</b>
<hr/>		
<b>This Document Relates To:</b>	§	
	§	
<b>MARK NEWBY, et al., Individually and On Behalf of All Others Similarly Situated,</b>	§	
	§	
<b>Plaintiffs,</b>	§	
<b>vs.</b>	§	
	§	
<b>ENRON CORP., et al.,</b>	§	
	§	
<b>Defendants.</b>	§	
<hr/>		
<b>THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al., Individually and On Behalf of All Others Similarly Situated,</b>	§	
	§	
<b>Plaintiffs,</b>	§	
<b>vs.</b>	§	
	§	
<b>KENNETH L. LAY, et al.,</b>	§	
	§	
<b>Defendants.</b>	§	

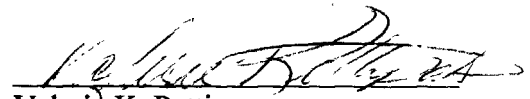
**I, Valerie K. Pettipas, being first duly sworn, states:**

1. My name is Valerie K. Pettipas. I am over twenty-one years of age and am fully competent to make this Affidavit. I have personal knowledge of the facts set forth in this Affidavit.
2. I am Assistant Corporate Secretary of Canadian Imperial Bank of Commerce.
3. Canadian Imperial Bank of Commerce, a legal entity separate from any and all affiliated companies, is a registered Canadian chartered bank. Canadian Imperial Bank of Commerce commenced its business as "The Canadian Bank of Commerce" in 1867. In 1961, The Canadian Bank of Commerce and the Imperial Bank of Canada amalgamated to form "Canadian Imperial Bank of Commerce." The principal offices of Canadian Imperial Bank of Commerce are located in Toronto, Ontario, Canada.



4. Canadian Imperial Bank of Commerce provides, among other services, commercial lending services, and generates some of its revenues from these services.
5. The board of directors of Canadian Imperial Bank of Commerce conducts board meetings that are independent of board meetings for affiliated entities, separately recording and maintaining the minutes.
6. Canadian Imperial Bank of Commerce prepares and keeps its own books and records, and maintains its own bank accounts, accounts receivable, lines of credit, and other assets.

Further Affiant sayeth not.

  
Valerie K. Pettipas

Subscribed and sworn to before  
me this 11<sup>th</sup> day of April, 2003



Notary Public

~~My commission expires:~~



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re ENRON CORPORATION SECURITIES § Civil Action No. H-01-3624  
LITIGATION § (Consolidated)

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This Document Relates To:

MARK NEWBY, et al., Individually and On  
Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

ENRON CORP., et al.,

Defendants.

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THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA, et al., Individually and On  
Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

KENNETH L. LAY, et al.,

Defendants.

**AFFIDAVIT OF LUCIA MARTINEZ**

I, Lucia Martinez, being first duly sworn, states:

1. My name is Lucia Martinez. I am over twenty-one years of age and am fully competent to make this Affidavit.
2. I am an associate in the leveraged finance group of CIBC World Markets Corp.
3. I am familiar with the different companies discussed below which are affiliated with but legally distinct from Canadian Imperial Bank of Commerce ("CIBC"). I am familiar with the transaction documents related to the matters discussed below.
4. With the sole exception of the loans described in paragraph 5 of this Affidavit, Canadian Imperial Bank of Commerce did not participate in the transactions identified below. The transactions involved CIBC affiliates in the manner specified in the following paragraphs.

**Canadian Imperial Bank of Commerce**

5. Canadian Imperial Bank of Commerce (and other banks) made loans to the Hawaii 125-0 Trust (now known as Hawaii II 125-0 Trust) and the Hawaii I 125-0 Trust.
6. Canadian Imperial Bank of Commerce was not an underwriter in the July 2001 6.31% and 6.19% offerings of Marlin Water Trust II and Marlin Water Capital Corp. II Notes.
7. Canadian Imperial Bank of Commerce did not issue any analyst research reports related to Enron Corp.
8. Canadian Imperial Bank of Commerce was not an underwriter (and not the "lead" underwriter) in the October 2000 NewPower IPO.
9. Canadian Imperial Bank of Commerce was not an underwriter in the May 1999 transaction in which Enron Corp. offered \$500 million 7.375% Notes due 2019.
10. Canadian Imperial Bank of Commerce was not an initial purchaser in the July 2001 6.31% and 6.19% offerings of Marlin Water Trust II and Marlin Water Capital Corp. II Notes.
11. Canadian Imperial Bank of Commerce was not one of the lenders under a \$250 million credit facility agreement with Enron Corp. and Enron Europe Limited in November 1997.
12. Canadian Imperial Bank of Commerce was not one of the lenders under a \$250 million credit facility agreement with Enron Corp. and Enron Europe Limited in either July or November of 1998.
13. Upon the formation of LJM2, neither Canadian Imperial Bank of Commerce nor any affiliated entity made an investment in LJM2.
14. Canadian Imperial Bank of Commerce was not one of the lenders under a \$1 billion credit facility agreement with Enron Corp. in either August or September 1998.
15. Canadian Imperial Bank of Commerce was not one of the lenders under an August 2001 \$3 billion committed credit facility, a \$1.25 billion long-term credit facility agreement, or a \$1.75 billion 364-day revolving credit facility agreement with Enron Corp.
16. Canadian Imperial Bank of Commerce never held equity certificates in the Hawaii 125-0 Trust (now known as the Hawaii II 125-0 Trust) or in the Hawaii I 125-0 Trust.
17. Canadian Imperial Bank of Commerce was not an underwriter in a May 1998 Enron offer to sell 35 or 15 million shares of Enron common stock (or 2,250,000 shares as an over-allotment option) at \$25 (or \$50) per share.

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18. Canadian Imperial Bank of Commerce was not an underwriter in a February 1999 transaction in which Enron offered to sell 27.6 or 12 million common shares (or 1,800,000 shares for an overallotment option) for \$31.34 or \$62.6875 per share.
  19. Canadian Imperial Bank of Commerce did not act as an underwriter for Enron in (1) a November 1993 transaction in which Enron offered to sell 8 million 8% Enron capital preferred shares at \$25 per share; (2) a July 1994 transaction in which Enron offered to sell 3 million 9% Enron capital preferred shares at \$25 per share; and (3) a January 1997 transaction in which Enron offered to sell 6 million shares 8 1/8% Enron capital preferred shares at \$25 per share.
  20. Canadian Imperial Bank of Commerce did not lend any funds to “Braveheart” or to EBS Content Systems, LLC, or otherwise participate in Enron’s joint venture with Blockbuster VOD.
  21. Canadian Imperial Bank of Commerce did not issue, or in any way contribute to, registration statements or prospectuses filed in connection with Enron offerings.

**CIBC World Markets Corp.**

22. CIBC World Markets Corp.—not “CIBC” or Canadian Imperial Bank of Commerce—issued analyst research relating to Enron Corp.
23. CIBC World Markets Corp.—not “CIBC” or Canadian Imperial Bank of Commerce—was an underwriter (and not the “lead” underwriter) in the October 2000 NewPower IPO.
24. CIBC World Markets Corp.—not “CIBC” or Canadian Imperial Bank of Commerce—was an underwriter in the May 1999 transaction in which Enron Corp. offered \$500 million 7.375% Notes due 2019.
25. In July 2001, CIBC World Markets Corp.—not “CIBC” or Canadian Imperial Bank of Commerce—was an initial purchaser in the 6.31% offering of Marlin Water Trust II and Marlin Water Capital Corp. II Notes.

**CIBC Oppenheimer Corp. & Oppenheimer & Co., Inc.**

26. CIBC Oppenheimer Corp.—not “CIBC” or Canadian Imperial Bank of Commerce—was an underwriter in a May 1998 transaction in which Enron offered to sell 15 million (not 35 million) shares of Enron common stock (plus 2,250,000 shares as an overallotment option) at \$50 (not \$25) per share.
27. CIBC Oppenheimer Corp.—not “CIBC” or Canadian Imperial Bank of Commerce—was an underwriter in a February 1999 transaction in which Enron offered to sell 12 million (not 27.6 million) common shares (plus 1,800,000 shares for an overallotment option) for \$62.6875 (not \$31.34) per share.

28. Based on my review of documents filed with the SEC, it was Oppenheimer & Co., Inc.—not “CIBC” or Canadian Imperial Bank of Commerce—that acted as an underwriter for Enron in the following transactions: (1) a November 1993 transaction in which Enron offered to sell 8 million 8% Enron Capital LLC preferred shares at \$25 per share; (2) a July 1994 transaction in which Enron offered to sell 3 million 9% Enron Capital Resources, L.P. preferred securities at \$25 per share; and (3) a January 1997 transaction in which Enron offered to sell 6 million 8 1/8% Enron Capital Trust II trust preferred securities at \$25 per share.

#### **CIBC World Markets plc**

29. In July 2001, CIBC World Markets plc—not “CIBC” or Canadian Imperial Bank of Commerce—was an initial purchaser in the 6.19% offering of Marlin Water Trust II and Marlin Water Capital Corp. II Notes.

#### **CIBC Wood Gundy plc**

30. In November 1997, CIBC Wood Gundy plc—not “CIBC” or Canadian Imperial Bank of Commerce—was one of the lenders under a \$250 million credit facility agreement with Enron Corp. and Enron Europe Limited.
31. In November 1998 (not July 1998), CIBC Wood Gundy plc—not “CIBC” or Canadian Imperial Bank of Commerce—was one of the lenders under a \$250 million credit facility agreement with Enron Corp. and Enron Europe Limited.

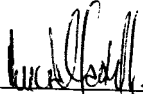
#### **CIBC Capital Corporation**

32. Upon formation of LJM2, CIBC Capital Corporation—not “CIBC” or Canadian Imperial Bank of Commerce—became a limited partner in LJM2, but neither Canadian Imperial Bank of Commerce nor any affiliated entity made an investment in LJM2.


#### **CIBC Inc.**

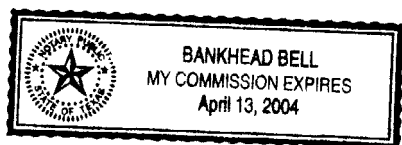
33. CIBC Inc.—not “CIBC” or Canadian Imperial Bank of Commerce—became one of the lenders under a \$1 billion credit facility agreement with Enron Corp. in August 1998 (not September 1998).
34. As of August 2001, CIBC Inc.—not “CIBC” or Canadian Imperial Bank of Commerce—was one of the lenders under a \$1.25 billion long-term credit facility agreement and a \$1.75 billion 364-day revolving credit facility agreement (not a \$3 billion committed credit facility) with Enron Corp.
35. CIBC Inc.—not “CIBC” or Canadian Imperial Bank of Commerce—held equity certificates in the Hawaii 125-0 Trust (now known as the Hawaii II 125-0 Trust) and in the Hawaii I 125-0 Trust.

Further Affiant sayeth not.

  
\_\_\_\_\_  
Lucia Martinez

Subscribed and sworn to before  
me this 29<sup>th</sup> day of April, 2003

  
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Notary Public  
My commission expires: 4/13/04







UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re ENRON CORPORATION SECURITIES § Civil Action No. H-01-3624  
LITIGATION § (Consolidated)

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**AFFIDAVIT OF PATRICIA BOURDON**

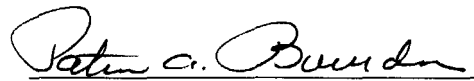
I, Patricia Bourdon, being first duly sworn, state:

1. My name is Patricia Bourdon. I am over twenty-one years of age and am fully competent to make this Affidavit. I have personal knowledge of the facts set forth in this Affidavit.
2. I am the corporate secretary for CIBC World Markets Corp.
3. CIBC World Markets Corp., a legal entity separate from Canadian Imperial Bank of Commerce, is a Delaware corporation, a subsidiary of CIBC World Markets Holdings Inc., and has its principal offices in New York, NY. Prior to a 1999 name-change, CIBC World Markets Corp. was known as CIBC Oppenheimer Corp. CIBC Oppenheimer Corp. was formed in 1997, when CIBC Wood Gundy Securities Corp. acquired Oppenheimer Holdings, Inc., the sole shareholder of Oppenheimer & Co., Inc., after which the three entities merged to form CIBC Oppenheimer Corp. Prior to this


acquisition and merger in 1997, Oppenheimer & Co., Inc. was an entity wholly unrelated to CIBC.

4. CIBC World Markets Corp. operates as a securities broker/dealer, investment banker and asset manager and maintains memberships on major exchanges including the New York Stock Exchange and the American Stock Exchange. CIBC World Markets Corp. provides services including securities brokerage, securities research, customer financing, securities trading and arbitrage, corporate finance, mergers and acquisitions, underwriting and investment advisory services. CIBC World Markets Corp. generates its revenues from these services. Throughout the entire purported class period—October 19, 1998 through November 27, 2001—CIBC World Markets Corp. was fully capitalized, with hundreds of millions of dollars in net assets.
5. The board of directors of CIBC World Markets Corp. conducts board meetings that are independent of board meetings for affiliated entities, separately recording and maintaining the minutes.
6. CIBC World Markets Corp. prepares and keeps its own books and records, and maintains its own by-laws, bank accounts, accounts receivable, lines of credit, and other assets.

Further Affiant sayeth not.

  
Patricia Bourdon

Subscribed and sworn to before  
me this 11 day of April, 2003

  
Notary Public  
My commission expires: 1/14/2005

**Amy C. Dempsey**  
**NOTARY PUBLIC**  
My commission expires Jan. 14, 2005



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re ENRON CORPORATION SECURITIES § Civil Action No. H-01-3624  
LITIGATION § (Consolidated)

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**AFFIDAVIT OF GARY W. BROWN**

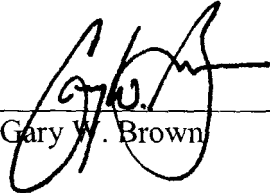
I, Gary W. Brown, being first duly sworn, states:

1. My name is Gary W. Brown. I am over twenty-one years of age and am fully competent to make this Affidavit. I have personal knowledge of the facts set forth in this Affidavit.
2. I am a Managing Director at CIBC INC.
3. CIBC INC., a legal entity separate from Canadian Imperial Bank of Commerce, is a Delaware corporation, incorporated in 1987 (initially under the name CIBC Financial Services, Inc.), with its principal offices in New York, New York. CIBC INC. is a subsidiary of Canadian Imperial Holdings Inc.
4. CIBC INC. provides (among other financial services) commercial lending services, and generates its revenues from these services. Throughout the entire purported class

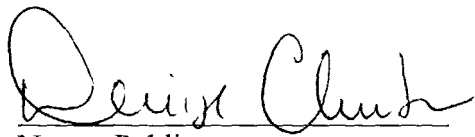
period—October 19, 1998 through November 27, 2001—CIBC INC. was fully capitalized, with over a billion dollars in net assets.

5. The board of directors of CIBC INC. conducts board meetings independent of those for affiliated entities, separately recording and maintaining the minutes
6. CIBC INC. prepares and keeps its own books and records, and maintains its own by-laws, bank accounts, accounts receivable, lines of credit, and other assets.

Further Affiant sayeth not.

  
\_\_\_\_\_  
Gary W. Brown

Subscribed and sworn to before  
me this 15 day of April, 2003

  
\_\_\_\_\_  
Notary Public  
My commission expires: 12/2/05

**DENISE D. CLINTON**  
Notary Public, State of New York  
No. 41-4989314  
Qualified in Queens County  
Commission Expires December 2, 2005

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The Exhibit(s) May  
Be Viewed in the  
Office of the Clerk